



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP - 175056

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 17, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on July 28, 2016, by telephone.

The issue for determination is whether petitioner is liable for an MA overpayment.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Brown County Human Services  
Economic Support-2nd Floor  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**  
Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. On November 28, 2014 the county sent petitioner a notice informing her that she was eligible for BadgerCare Plus (BC+) MA effective January 1, 2015, with no premium. The notice told

petitioner that if her income rose above \$1,310.83 in a month, she should report the change to the county agency.

3. Petitioner did not realize that she had coverage in addition to her minor daughter, and was unaware that he was receiving BC+. Petitioner was covered under her father's health insurance during the overpayment period.
4. Petitioner's income exceeded program limits in April, 2015-July, 2015. On June 2, 2016, the county sent petitioner notices informing her that he was overpaid a total of \$401.00 in MA payments from April, 2015 through July, 2015, claim nos. [REDACTED]

### **DISCUSSION**

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:...

2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

As of April 1, 2014 all childless adults became eligible for BC+ but with an income limit of 100% of the Federal Poverty Level. See Wis. Stat., §49.471(4)(a)4, and the MA Handbook, Appendix 50.1 for the current income limit. Thus when petitioner's income rose above that amount she lost BC+ eligibility.

Although I am sympathetic to petitioner's situation, I must uphold the overpayment. Petitioner applied for health care, and the agency notified petitioner that her application was approved for both herself and her daughter. I do not doubt petitioner's testimony that she simply did not notice that both she and her daughter were approved, but I cannot blame that on the agency.

The failure to report changes does not have to be intentional or fraudulent. Because petitioner did not fully read the notice regarding her BC+ eligibility, she mistakenly did not know that she was covered. The result, however, mistaken, was that the state MA program paid \$401.00 in BC+ coverage on petitioner's behalf, for which petitioner was ineligible. Under the clear language of the statute, the agency is obligated to seek recovery of those payments.

The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant her relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Work & Family Services Unit, that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth

in statutes, federal regulations, and administrative code provisions. Under law, she was not eligible; no exception applies, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

### **CONCLUSIONS OF LAW**

The agency correctly seeks recovery of an MA overpayment because petitioner did not report an increase in income after she was determined to be eligible for BC+.

**THEREFORE, it is**

### **ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 13th day of September, 2016

\s\_\_\_\_\_  
Peter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 13, 2016.

Brown County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability